

Document #4748

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RESOLUTION OF THE BOSTON REDEVELOPMENT AUTHORITY
RE: FINAL DESIGNATION OF THE REDEVELOPER FOR THE
ARLINGTON/HADASSAH SUB-PARCEL OF PARCEL 1 IN THE
PARK PLAZA URBAN RENEWAL AREA

WHEREAS, the Boston Redevelopment Authority, hereinafter referred to as the "Authority", has established an Urban Renewal Plan under Chapter 121B of the General Laws of the State of Massachusetts; and

WHEREAS, the Urban Renewal Plan for the Park Plaza Urban Renewal Area, hereinafter referred to as the "Project Area" has been duly reviewed and approved in full compliance with local and state laws; and

WHEREAS, the Authority is cognizant of the conditions that are imposed in the undertaking and the carrying out of urban renewal projects under Chapter 121B, including those prohibiting discrimination because of race, color, sex, religion or national origin; and

WHEREAS, the Druker Company has submitted a satisfactory proposal for the redevelopment of the Arlington/Hadassah sub-parcel of Parcel 1 in the Project Area; and

WHEREAS, on December 22, 1983 the Authority granted a tentative designation to the Druker Company as redeveloper of the Arlington/Hadassah sub-parcel:

NOW, THEREFORE, BE IT RESOLVED BY THE BOSTON REDEVELOPMENT AUTHORITY:

1. That The Heritage Residential Realty Trust and The Heritage Commercial Realty Trust, Ronald M. Druker and David C. Bell, Trustees, be and hereby are finally designated as redeveloper of the Arlington/Hadassah sub-parcel of Parcel 1 in the Park Plaza Urban Renewal Area.
2. That it is hereby determined that The Heritage Residential Realty Trust and The Heritage Commercial Realty Trust possess the qualifications and financial resources necessary to acquire and redevelop the land in accordance with the Urban Renewal Plan for the Project Area and with the final plans and specifications as approved by the Authority.
3. That it is hereby found and determined that the proposed development will not result in significant damage to or impairment of the environment and further that all practicable and feasible means and measures will be utilized to avoid or minimize change to the environment.

4. That the Authority enter into, and the Director be and hereby is authorized to execute a Land Disposition Agreement substantially in the form attached hereto and Deed and such other documents in connection with the redevelopment of the Arlington/Hadassah sub-parcel as the Director may deem reasonable or necessary.

MEMORANDUM

MAY 1, 1986

TO: Boston Redevelopment Authority and
Stephen Coyle, Director

FROM: Martha R. Bailey, Senior Project Coordinator
Karen Jennings-Flynn, Assistant Development Counsel

SUBJECT: PARK PLAZA URBAN RENEWAL AREA
FINAL DESIGNATION OF REDEVELOPER OF
ARLINGTON/HADASSAH SUB-PARCEL OF PARCEL 1 -
AUTHORIZATION FOR DIRECTOR TO SIGN LAND
DISPOSITION AGREEMENT

On December 22, 1983 the Authority granted a tentative designation to the Druker Company as redeveloper of the Arlington/Hadassah sub-parcel of Parcel 1 in the Park Plaza Urban Renewal Area. The Druker Company was tentatively designated after a competitive developer selection process conducted by the Authority, starting with the issuance of a first stage developer's kit in September 1982.

The Authority has assisted the developer to complete site assembly, taking the property at 308-310 Boylston Street on October 17, 1985. It also took a number of sliver parcels to allow for construction of the foundation and of certain building elements on December 5, 1985.

Demolition of all structures has occurred and site preparation work has started under an early entry license with the BRA. Actual construction is planned to start shortly and will be completed by Spring 1988. The Turner Company is the construction contractor.

The project, The Heritage on the Garden, will be a 12-story mixed-use building, containing residential condominiums, office and retail space, and parking. It is sited on approximately 44,300 square feet of land located between Arlington Street, Boylston Street, Park Plaza (formerly Providence Street) and the Bradley Building. The building will include 494,000 gross square feet of floor area with the largest amount, 219,000 square feet, dedicated to 87 residential condominium units, 130,000 square feet to office space and 61,000 square feet to retail space including restaurants. In addition there will be 175 residential and office parking spaces below ground on two levels accessed from Park Plaza. There will be a pool and a health club in the third basement level.

The developer will make substantial improvements to the sidewalks and streets surrounding the project. The sidewalks around the building will be paved in brick and granite, the sidewalk on the Park Plaza side will be considerably widened and a small park with trees, seating and a water feature will be constructed at the Arlington Street intersection. In addition, in accordance with BRA requirements, the street and western sidewalk of Hadassah Way will be repaved in brick by the developer. The Land Disposition Agreement calls for the BRA and developer to share the cost of repaving part of Park Plaza.

The building and its landscape plan have undergone extensive design review by Authority staff and by the Park Plaza Civic Advisory Committee. Both are pleased with the high level of quality of the overall design and of the proposed construction materials.

On December 5, 1985, the Authority held a public hearing and approved the Development Impact Project Plan and Agreement and the Board of Appeals followed with its approval on February 27, 1986. The DIPP provides for a linkage payment of approximately \$445,000 to be paid, as well as two additional contributions for the public benefit. One is a voluntary supplemental payment to the Boston Housing Partnership, Inc. in an amount equal to the difference between \$1,000,000 and the amount of the linkage payment, or approximately \$555,000. The second is a contribution of \$75,000 per annum, escalated every three years according to the C.P.I., from the commercial portion of the project to an organization whose sole purpose is the maintenance and improvements of the Boston Public Garden.

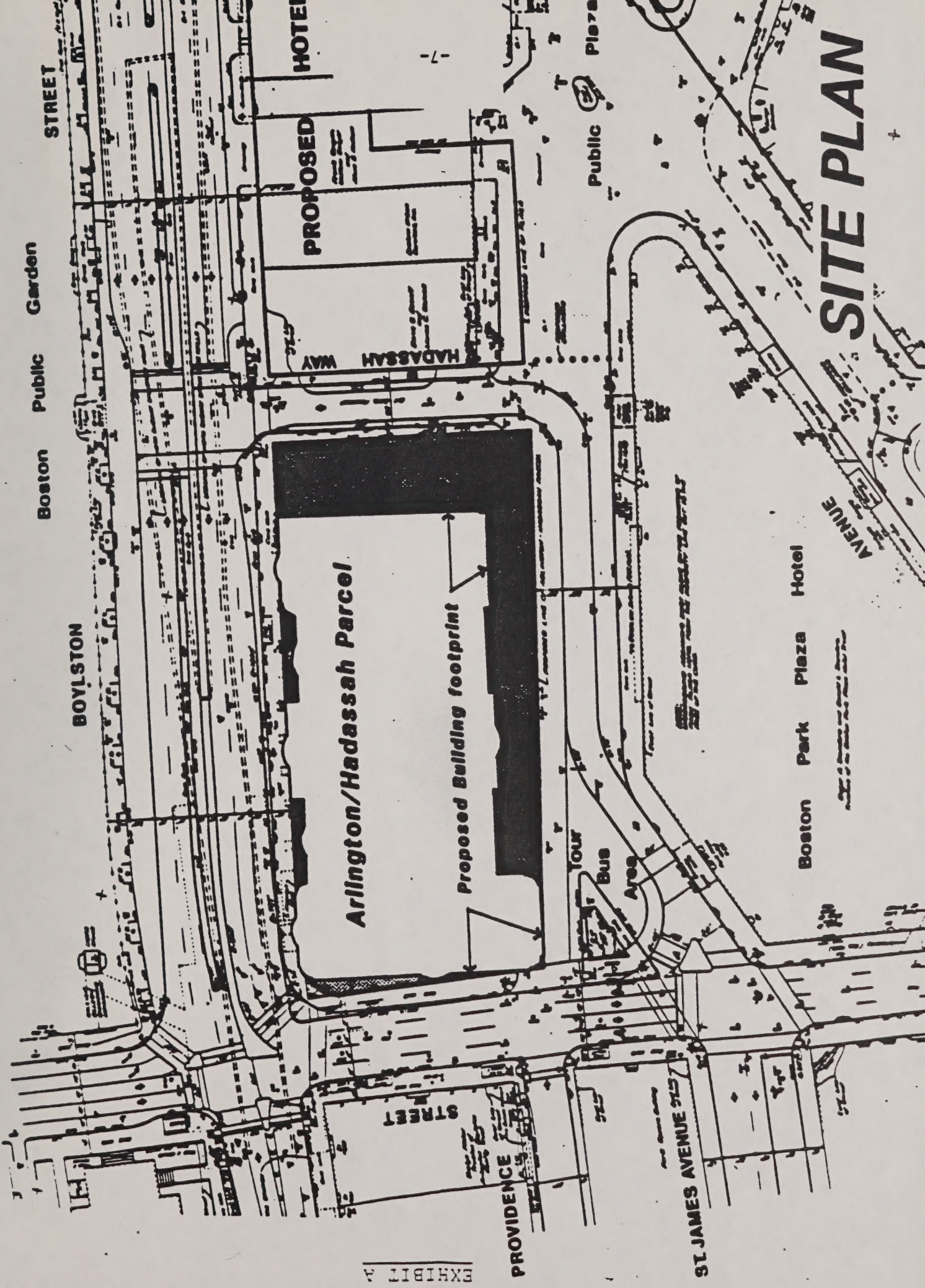
Construction jobs equal to 975 person-years will be created. The completed project will be the locus for approximately 620 permanent jobs. The Developer will submit a Residents Construction Employment Plan, which shall ensure that of the construction employment opportunities created in the project, 50% will be made available to Boston residents, 25% to minorities and 10% to women. The developer has also agreed to formulate an Employment Opportunity Plan which will describe the developer's good faith efforts to achieve a goal that 50% of employment opportunities created by the project will be made available to Boston residents. This plan will be submitted for the Authority's approval no later than one year from the execution of the Development Impact Project Agreement.

Since the time of tentative designation the developer has formed two trusts to carry out the project. They are The Heritage Residential Realty Trust and The Heritage Commercial Realty Trust, Ronald M. Druker and David C. Bell, Trustees. The joint venture partner is The Boston Company Real Estate Counsel representing a major pension fund. Construction financing will be provided by the Bank of Boston.

There have been negotiations between Authority staff and the developer over the last few months regarding the general and specific terms and conditions of the Land Disposition Agreement which is proposed for execution substantially in the form as it now appears. It calls for four conditions to be satisfied before conveyance of the parcels: final approval of plans and specifications; an executed contract with a construction company; evidence of financing commitments; and a full building permit. These conditions have been satisfied in the opinion of Authority staff.

It is considered that the redeveloper has the expertise, experience and financial resources necessary to successfully and expeditiously undertake and complete the proposed project. Therefore, it is recommended that the Authority grant Final Designation as redeveloper of the Arlington/Hadassah sub-parcel of Parcel 1 in the Park Plaza Urban Renewal Area to The Heritage Residential Realty Trust and The Heritage Commercial Realty Turst, Ronald M. Druker and David C. Bell, Trustees, and that it authorize the Director to execute the Land Disposition Agreement between the redeveloper and the BRA and other related documents as needed.

An appropriate resolution is attached.



SITE PLAN

THE HERITAGE RESIDENTIAL REALTY TRUST and
THE HERITAGE COMMERCIAL REALTY TRUST

LAND DISPOSITION AGREEMENT

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LAND DISPOSITION AGREEMENT

BY AND BETWEEN

THE

BOSTON REDEVELOPMENT AUTHORITY

AND

THE HERITAGE RESIDENTIAL REALTY TRUST and
THE HERITAGE COMMERCIAL REALTY TRUST

LAND DISPOSITION AGREEMENT

THIS AGREEMENT is made and entered into as of this day of , 1986, by and among the BOSTON REDEVELOPMENT AUTHORITY and THE HERITAGE RESIDENTIAL REALTY TRUST and THE HERITAGE COMMERCIAL REALTY TRUST.

The parties hereto do hereby agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.01: Defined Terms

For the purpose of this Agreement, the following terms shall have the meanings, respectively, ascribed to them below:

(a) "Architect" shall mean the firm of The Architects Collaborative, Inc. of Cambridge, Massachusetts, acting pursuant to a contract for architectural services with respect to the Improvements to be erected on the Property, a copy of which contract has been deposited with the Authority, or such firm or contract as shall be substituted by the Redeveloper with the prior written consent of the Authority.

(b) "Authority" shall mean the Boston Redevelopment Authority, a public body, politic and corporate, organized and existing pursuant to Chapter 121B of the Massachusetts General Laws (Ter. Ed.), as amended, and shall include any successor in interest, whether by act of a party to this Agreement or by operation of law or otherwise.

(c) "Building" shall mean construction of a building containing approximately 60,000 square feet of retail space, 130,000 square feet of office space, 220,000 square feet of residential condominium units and 175 parking spaces, with ancillary elements, including a health club and swimming pool, to be constructed by the Redeveloper pursuant to the Plans and Specifications.

(d) "City" shall mean the City of Boston, Massachusetts.

(e) "Commercial Component" shall mean, from and after submission of the Building to the provisions of Chapter 183A of the Massachusetts General Laws, the Building exclusive of the Residential Component; until such submission, Commercial Component shall mean the entire Building.

(f) "Commercial Redeveloper" shall mean Ronald M. Druker and David C. Bell as Trustees of The Heritage Commercial Realty Trust, under Declaration of Trust dated as of May 1, 1985, and recorded with the Suffolk County Registry of Deeds at Book 11574, Page 251, and shall include any successor in interest or assign, whether by act of a party to this Agreement or by operation of law or otherwise.

(g) "Component" shall mean, in the context, either or both of the Residential Component and the Commercial Component.

(h) "Cooperation Agreement" shall mean that certain Cooperation Agreement dated August 23, 1985, between the Authority and The Heritage Trust, the predecessor-in-interest to the Redeveloper, a copy of which is attached hereto and incorporated herein as Exhibit A.

(i) "Deed" shall mean the instrument, to be recorded with this Agreement in Suffolk County Registry of Deeds in Boston, Massachusetts, whereby the Parcel is conveyed to the Redeveloper.

(j) "DIP Agreement" shall mean that certain Development Impact Project Agreement dated as of December 18, 1985, by and between the Authority and the Redeveloper, a copy of which is attached hereto and incorporated herein as Exhibit B.

(k) "Director" shall mean the Director of the Authority, or any person designated by him to act in his behalf.

(l) "Event of Default" shall have the meaning set out therefor in Section 8.02(a).

(m) "Improvements" shall mean construction of the Building together with the Plaza and the sidewalks around the Building and

along the westerly side of Hadassah Way, all to be constructed by the Redeveloper pursuant to the Plans and Specifications.

(n) "Letter of Intent" shall mean that certain Letter of Intent dated June 19, 1984, addressed to the Authority from Ronald M. Druker on behalf of The Druker Company, a copy of which is attached hereto and incorporated herein as Exhibit C.

(o) "Major Design and Exterior Elements" shall mean all basic design and construction elements which may not be materially changed by the Redeveloper without the prior written approval of the Authority, limited to (i) the location, height, width, length, massing, fenestration, exterior facade materials and any other exterior Building characteristics which would be readily observable by the general public, (ii) the architectural designs and dimensions of the exterior entrances to the street level of the Building, (iii) all exterior open spaces on the Property, (iv) the Plaza, and (v) additions and changes to the terraces of the Building by or for Unit Owners provided that such additions or changes are approved in advance by the Authority, with the exception of landscaping, furniture and other items not readily observable by the public; but expressly excluding from such elements the specific locations of the entrances to retail stores in the Building.

(p) "Parcel" shall mean both (i) 308-310 Boylston Street, the so-called "Epstein Parcel" described in Order of Taking dated October 17, 1985, and recorded at Suffolk County Registry of Deeds on November 7, 1985, as Instrument No. 96, and shown on the Survey Plan as the lot designated as "_____" and (ii) the so-called "Sliver Parcels" described in Order of Taking dated December 5, 1985, recorded in Book _____, Page _____, which Sliver Parcels are shown on the Survey Plan as parcels numbered _____, but shall expressly exclude the portions of the Epstein Parcel described in the plan attached hereto as Exhibit "F", which portions are being retained by the Authority.

(q) "Plan" shall mean the Park Plaza Urban Renewal Plan, adopted by the Authority on July 15, 1971, approved by the City Council of the City of Boston on December 6, 1971, restated by the Authority in May, 1977, a certified copy of which restated Plan has been delivered by the Authority to the Redeveloper. The "term

of the Plan" shall mean a period of forty (40) years from and after December 6, 1971.

(r) "Plan Area" shall mean the area in the City of Boston to which the Plan pertains, as indicated by the boundary descriptions and maps therein.

(s) "Plans and Specifications" shall mean the plans and specifications listed in the schedule attached hereto as Exhibit D as such plans and specifications shall be amended, supplemented or modified from time to time by the Redeveloper, provided that any changes materially affecting Major Design and Exterior Elements shall be subject to the prior approval of the Authority.

(t) "Plaza" shall refer to an area of public land located as shown on the plan attached hereto as Exhibit E and to be used by the general public for public pedestrian purposes.

(u) "Property" shall mean the certain parcel or parcels of land shown on the Survey Plan.

(v) "Redeveloper" shall mean the Residential Redeveloper and the Commercial Redeveloper, collectively.

(w) "Residential Component" shall mean, from and after submission of the Building to the provisions of Chapter 183A of the Massachusetts General Laws, the portion of the Building consisting of the residential condominium units and the common areas ancillary thereto; until such submission, Residential Component shall mean the entire Building.

(x) "Residential Redeveloper" shall mean Ronald M. Druker and David C. Bell as Trustees of The Heritage Residential Realty Trust, under Declaration of Trust dated as of May 1, 1985, and recorded with the Suffolk County Registry of Deeds at Book 11574, Page 246, and shall include any successor in interest or assign, whether by act of a party to this Agreement or by operation of law or otherwise.

(y) "Survey Plan" shall mean the plan entitled "Plan of Land, Boston, Mass. Owned by Ronald M. Druker et al, Trustees of The Heritage Trust", dated January 28, 1985, prepared by Cullinan

Engineering Co., Inc, and attached hereto and incorporated herein as Exhibit G.

(z) "Unit Owner" shall mean any person or party who hereafter purchases, owns or sells a condominium unit in the Residential Component.

ARTICLE 2

TRANSFER OF THE PROPERTY AND PAYMENT THEREFOR

Section 2.01: Covenant of Sale

Subject to all of the terms, covenants and conditions of this Agreement, the Authority agrees to sell and convey and the Redeveloper covenants and agrees to purchase and accept the Parcel.

Section 2.02: Condition of Land to Be Conveyed

The Authority and the Redeveloper covenant and agree that the Parcel shall be conveyed in "as is" condition, free and clear of all tenants and occupants, and subject to the terms and provisions of Section 2.05.

Section 2.03: Purchase Price and Payment Therefor

(a) The total purchase price for the Parcel shall be \$1,675,175.00, of which said price the Redeveloper has heretofore paid \$1,215,000.00 in accordance with the Cooperation Agreement. The outstanding amount due the Authority is \$460,175.00. This outstanding amount, adjusted according to the terms of Section 2.07, results in the outstanding balance of \$387,148.00 to be paid by the Redeveloper on the closing date by a cashiers or certified bank check drawn to the order of the Authority.

(b) To the extent additional payments shall become due from the Redeveloper to the Authority pursuant to the Cooperation Agreement, the Redeveloper agrees in accordance with the Cooperation Agreement to make such payments to the Authority.

Section 2.04: Time of Sale and Conveyance

The sale and conveyance and delivery of possession of the Parcel, and the purchase of the same by the Redeveloper, shall take place within a reasonable period of time following satisfaction of the conditions precedent set forth in Section 2.08 hereof, at the office of the Authority at City Hall, Boston, Massachusetts, or at any date prior thereto as is satisfactory to the Authority and the Redeveloper. Prior to the sale and conveyance and delivery of possession of the Parcel, subject to approval of the Director, the Redeveloper shall have the right to enter upon the Parcel for the purpose of demolition, clearance, site preparation, excavation, sheeting and shoring, installation of foundations, and other such work, and to permit its agents, employees, contractors and subcontractors to enter upon the Parcel for such purposes, provided that the Redeveloper shall indemnify and save harmless the Authority from all suits, actions, claims, damages or losses, expenses and costs of every kind and description to which the Authority may be subjected or put by reason of injury (including death) to persons or property resulting from, in connection with, or growing out of any act of commission or omission of the Redeveloper, its agents, servants, employees, visitors, guests, contractors, subcontractors, or any and all other persons or corporations dealing with the Redeveloper in the occupancy and use of the Parcel.

Section 2.05: Title and Instrument of Conveyance

The sale and conveyance shall be by Quitclaim Deed of good and marketable fee simple record title free and clear of all liens and encumbrances, but subject to and with the benefit of all conditions, easements, and restrictions set forth or referred to in this Agreement and/or the Plan. The sale and conveyance shall be free and clear of that certain taking for sidewalk purposes pursuant to the order of the Authority dated October 17, 1985, recorded with Suffolk Registry of Deeds in Book 11990, Page 85, it being the intent of the Authority's subsequent fee simple taking of the Epstein Parcel that the same merge with the prior taking for sidewalk purposes.

Section 2.06: Federal Tax Stamps and Other Closing Costs

The Redeveloper shall pay the costs of any Federal or State documentary tax stamps which shall be required, and the cost of recording the Deed, this Agreement, and all other instruments and plans to be recorded together with the Deed.

Section 2.07: Adjustments

Taxes, sewer charges or other assessments or charges allocable with respect to any period after delivery to the Redeveloper of the Deed hereunder shall be paid by the Redeveloper.

The purchase price for the Parcel referred to in Section 2.03 shall be reduced by a credit in the amount of \$35,527.00, representing the sum of (i) one-half of the aggregate of all rents received by the Authority during the time period from November 1, 1985, to February 28, 1986, from tenants or occupants of the building located on the Epstein Parcel and (ii) one-half of the Redeveloper's direct management costs in connection with operating the Epstein Parcel.

The purchase price for the Parcel shall be further reduced by a credit of \$37,500, which amount shall be held by the Commercial Redeveloper in escrow and used to pay for up to one half of the costs of regrading and resurfacing of Park Plaza as described in this Agreement in Section 3.02(a)(3). Upon completion of such work, any amounts remaining from such escrow after one half of such costs have been paid as aforesaid shall be paid by the Commercial Redeveloper to the Authority.

With the delivery of the Quitclaim Deed, the Authority agrees to return to the Redeveloper the One Hundred Thousand Dollar (\$100,000.00) letter of credit delivered to the Authority pursuant to the Letter of Intent.

Section 2.08: Conditions Precedent to Conveyance

The Authority shall not be obligated to make conveyance of the Parcel unless and until the following events have all occurred, which events shall be deemed satisfactorily to have occurred upon conveyance of the Parcel:

(a) The Plans and Specifications have been approved by the Authority for all of the improvements included therein.

(b) The Redeveloper has entered into a contract (the "Construction Contract") with a construction or building company approved by the Authority, under which contract such construction or building company shall have full and complete continuing responsibility to the Redeveloper for not less than the construction of the foundations of the Building as required herein, and evidence (in the form of the first and last page) of such contract has been deposited with the Director.

(c) The Redeveloper has furnished evidence satisfactory to the Authority that the Redeveloper has the equity capital and commitments for mortgage financing adequate for the construction of the Improvements in accordance with the Plans and Specifications and the Construction Contract, evidence of which equity capital and commitments for mortgage financing has been received and approved by the Authority.

(d) The Redeveloper has obtained a full building permit from the City of Boston Inspectional Services Department and has paid all application fees in connection therewith.

ARTICLE 3

RESTRICTIONS AND CONTROLS UPON REDEVELOPMENT

Section 3.01: Restrictions on Use

(a) Each of the Redevelopers agrees with respect to the Component being developed by such Redeveloper, and the Deed shall contain agreements on the part of each of the Redevelopers that each shall:

1. Devote the applicable Component only to and in accordance with the uses specified in the Plan; and
2. Not discriminate upon the basis of race, color, sex, sexual preference, religion or national origin in the sale, lease or rental or in the use or occupancy of the applicable Component or any improvements erected or to be erected as a part thereof.

(b) It is intended and agreed, and the Deed shall so expressly provide, that the agreements provided in subsection (a) of this Section shall be agreements running with the land with respect to the applicable Component, binding to the fullest extent permitted by law and equity for the benefit and in favor of, and enforceable by, the Authority, its successors and assigns, the City, and, in the case of the agreement provided in subparagraph (2) of subsection (a), shall remain in effect without limitation as to time. The agreement provided in subparagraph (1) of subsection (a) shall terminate at the expiration of the term of the Plan. The terms "uses specified in the Plan" and "land use" referring to provisions of the Plan or similar language, in this Agreement shall include the land and all buildings, housing, and other requirements or restrictions of the Plan pertaining to such land.

(c) The Residential Redeveloper in respect of the Residential Component and the Commercial Redeveloper in respect of the Commercial Component each agrees that the applicable Component shall be open to all persons without discrimination on the basis of race, color, sex, sexual preference, religion or national origin and there shall be no discrimination in public access and use of the Commercial Component to the extent that it is open to the public, provided, however, that the provisions of this subsection (d) shall not be applicable to, or binding upon, any Unit Owner.

Section 3.02: Improvements and Submission of Plans

(a) The Authority and the respective Redevelopers, each with respect to the applicable Component, agree as follows:

1. The Redeveloper will construct the Building in accordance with the Plans and Specifications and applicable standards and controls of the Plan.
2. The Plans and Specifications for all aspects of the Improvements are hereby deemed approved by the Authority, except for the water feature, related paving and the granite feature, all in the Plaza (the "Plaza Features"). The Authority acknowledges that such

approval constitutes final design approval under the Authority's design review procedures, which procedures the Authority certifies the Redeveloper has fully complied with except with regard to the Plaza Features, and the Authority hereby certifies that the foregoing is the certification required under Section 26-3.2(d) of the Boston Zoning Code. The Authority further certifies that the Plans and Specifications comply with the requirements of the DIP Agreement and the Development Impact Project Plan referred to therein.

3. The Commercial Redeveloper will construct public sidewalks of granite and brick around the Building and along the westerly side of Hadassah Way and will construct the Plaza, all as shown on the Plans and Specifications. The sidewalks and construction of the Plaza shall be completed no later than five months after the completion of the Building. The Authority agrees to join with the Commercial Redeveloper to seek any approvals, reasonable easements and rights from public agencies necessary for this construction on public property (and the continuing obligations hereinafter contained for the maintenance and repair of such areas), and for any other work that shall be required outside the limits of the Property, and any reasonable delays caused by the lack of such approvals, easements and rights shall be added to the period of time allowed for completing such work. If the Commercial Redeveloper is unable to obtain such approvals, easements or rights, the Commercial Redeveloper shall be relieved of its obligations to perform such construction work and to maintain and repair such areas. In addition, the Authority agrees to cooperate with the Redeveloper in its efforts to obtain (i) an easement in favor of the Redeveloper to construct, maintain, repair and replace a so-called "vitrine" on the Plaza in a location acceptable to the Authority and the Redeveloper and (ii) any approvals, easements or other rights that shall be necessary from public agencies for the construction and operation of the outdoor cafe shown on the Plans and Specifications. Without limiting the foregoing, the Authority also agrees to cooperate with the Redeveloper in obtaining all necessary approvals and rights from

public agencies for the regrading and resurfacing of the portion of the roadway known as Park Plaza running along the southerly boundary of the Property, which regrading and resurfacing, provided that such approvals and rights are obtained, shall be performed by the Commercial Redeveloper in accordance with the provisions of Section 2.07. The foregoing work shall be completed in accordance with the specific repair plan therefor dated December , 1985, and approved by the Public Improvements Commission of the City on December , 1985. In addition, the Redeveloper shall be required to store during construction of the Improvements any so-called acorn lighting fixtures presently installed in and around the Property to the extent the Redeveloper determines to remove the same during construction and all such fixtures not yet installed but which the City plans to install, and to install or re-install such fixtures in connection with its construction of sidewalks and of the Plaza. The Authority hereby agrees to cooperate with the Redeveloper in obtaining any such lighting fixtures that have not yet been installed.

(b) No work shall be done on the construction of the Improvements to be erected on the Property unless such work conforms in every material respect with the Plans and Specifications. It is agreed that any change order issued and implemented subsequent to approval by the Authority of the plans and specifications listed in Exhibit A hereto must be approved by the Authority if it requires a change in any Major Design and Exterior Elements, and any change order which does not require a change in the Major Design and Exterior Elements shall be deemed approved by the Authority. The Redeveloper agrees that no change order which requires a change in the Major Design and Exterior Elements will be issued or implemented unless such change order shall have been submitted to and approved in writing by the Authority prior to its issuance or implementation. If the Authority shall neither approve nor disapprove any such change order in writing within ten (10) business days after receipt of such change order, then it shall be treated as having been approved, provided, however, that any transmittal of any request for approval of a change order shall recite that approval by the Authority is due within ten (10) business days of receipt or said change shall be deemed to be approved. In the event that the

Redeveloper shall fail to comply with the foregoing requirements, the Authority may, within a reasonable time after discovery thereof by the Authority, direct in writing that the Redeveloper, with respect to the applicable Component, so modify or reconstruct such portion or portions of the Improvements erected or being erected on the Property as are not in conformance with the Plans and Specifications or any approved modifications thereof or change order therefor, as to bring them into conformity therewith. The Redeveloper shall promptly comply with such a directive. In addition to any other remedies available under this Agreement, the Authority may enforce the provisions of this subsection 302(b) by an action in a court of appropriate jurisdiction to compel specific performance.

(c) If the Redeveloper shall furnish to the Authority monthly a certificate signed by the Architect to the effect that as Architect it has supervised all of the work done up to the date specified in such certificate on the construction of the Improvements and that, to the best of its knowledge and belief consistent with first class architectural practice, all of such work has been done in compliance with the requirements of subsection (b) above and if the Authority shall not, within thirty (30) days after receipt of such certificate, reject such certificate, the work done up to the date specified in such certificate shall be deemed to be in compliance with the requirements of this Agreement. The Authority shall, if it rejects any such certificate, promptly indicate to the Redeveloper, to the extent reasonably practicable, the basis for such rejection.

(d) In submitting change orders to the Authority for its approval as provided in paragraph (b) above, the Redeveloper shall consider and take into account the planning and design objectives set forth in the Plan and in the Plans and Specifications, and the Authority shall pursue such objectives in its review of and action on any such change orders so submitted.

(e) The Redeveloper shall not discharge the Architect without cause or hire new or additional architects except consulting architects or alter or amend the scope of services described in the contract deposited with the Authority for architectural services between the Architect and the Redeveloper so as to materially reduce said scope of services without in each

instance obtaining the prior written consent of the Authority. The foregoing limitation upon the hiring of additional architects shall not apply to the hiring of interior architects retained by the Redeveloper or the Architect.

(f) As required in the Plan, the Redeveloper agrees to provide works of art on the Property, satisfactory to the Director, and agrees to expend for such works a sum not less than one percent (1%) of the hard costs of construction of the base Building, exclusive of the work performed by or for tenants or Unit Owners. The term "works of art" as used herein shall be deemed to include ornaments, arrangements or effects erected through the use of sculpture, bas-reliefs, mosaics, frescoes, murals, prints, tapestries, paintings, and fountains which are sculptural in themselves or designed to enhance the setting of sculpture, and nonstandard street and open-space treatments and other improvements having an increment of aesthetic value as approved by the Director.

(g) No sign shall be erected or placed on the exterior of any building on the Property, or on any portion of the Property which is not enclosed within a building, unless the character, location, design, size, shape, form and lighting of such sign shall have been approved by the Authority in writing. Without limiting in any way the scope of the Authority's review, it is understood and agreed by the parties that the nature and design of the Improvements requires that a variety of retail signage be provided. No sign shall be approved which does not meet the following standards: signs may only be erected or placed upon the ground floor or second floor (in the latter instance, with the Authority's prior approval, which shall not be unreasonably withheld) street facade of each store, if any, or other individual use; signs may be permitted on awnings or marquees, if any, and on projections, if any, over the sidewalk, provided that the Redeveloper obtains the necessary permits and approvals for such; flashing, internally illuminated signs, exposed neon signs or signs other than those relating to businesses on the site, if any, shall not be permitted; and in no event shall a sign be approved which does not meet Plan controls and zoning requirements.

Section 3.03: Time for Commencement and Completion of Construction

(a) The Redeveloper shall begin the construction of the foundations of the Building on the Property in accordance with the Plans and Specifications not later than thirty (30) days after delivery of the Deed to the Redeveloper.

(b) The Redeveloper, with respect to the applicable Component, shall diligently prosecute to completion the construction of the Improvements on the Property and, subject to the other provisions of this Agreement, shall complete construction of the Building, which shall mean with respect to the Residential Component, Condominium Substantial Completion (hereinafter defined), not later than thirty (30) months after the date of the delivery and conveyance of the Deed, or as may be extended by permission of the Authority, which shall not be unreasonably withheld.

(c) The Redeveloper shall submit to the Authority for its approval a detailed estimated progress schedule at the time construction is begun in a format generally used in the construction of buildings. This schedule shall be resubmitted monthly until the construction of the Improvements has been completed, with actual progress shown in each submission. After the sale and conveyance and delivery of possession of the Parcel to the Redeveloper, such work of the Redeveloper shall be subject to inspection upon reasonable prior written notice by representatives of the Authority and of the City.

(d) Prior to the sale and conveyance and delivery of possession of the Parcel, the Authority shall permit the Redeveloper access thereto whenever and to the extent necessary to carry out the purposes of this Agreement, including the undertaking of demolition on the Parcel.

(e) It is intended and agreed that the agreement contained in this Section 3.03 with respect to the beginning and completion of the Improvements on the Property shall be agreements running with the land with respect to the applicable Component. This Section shall not, however, apply against a mortgagee permitted by this Agreement or its designee or purchaser as described in subsection (a) of Section 4.03 unless the mortgagee, designee or

purchaser shall elect to complete as permitted in Section 4.03, in which case the extension provisions of that Section shall apply.

Section 3.04: When Improvements Completed

The building of each Component shall be deemed completed for the purposes of this Agreement when the Improvements required of the Redeveloper with respect to such Component (with the exceptions hereinafter set forth) by the provisions of this Agreement and the Plans and Specifications have been built substantially in accordance therewith and are ready for occupation, and shall incontestably be deemed completed for the purposes of this Agreement upon the issuance of a Certificate of Completion by the Authority, as hereinafter provided. The exceptions hereinabove referenced shall be (i) items of work and adjustment of equipment and fixtures that can be completed after occupancy has been taken, i.e., so-called punch-list items, (ii) landscaping and other similar work which cannot then be completed because of climatic conditions and (iii) with respect to office, retail, other tenant space, and individual condominium units, items of work normally left for completion pursuant to the requirements of specific occupancy or sales agreements such as construction of interior partitions and doors, distribution of electrical outlets and switches, location of ventilation ducts and returns, placement of lighting fixtures, installation of finished ceilings, and other similar finish work.

Promptly after substantial completion of the Improvements in accordance with the provisions of this Agreement, the Authority will furnish the Redeveloper with an appropriate instrument so certifying. Such certification by the Authority shall be, and it shall be so provided in the Deed and in the certification itself, a conclusive determination of satisfaction and termination of the agreements contained in this Agreement and in the Deed with respect to the obligations of the Redeveloper and its successors and assigns, to construct the Improvements, including, without limitation, Sections 3.02 and 3.03 of this Agreement, provided that such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Redeveloper to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the Improvements, or any part thereof or the purchase of the Property.

With respect to such individual parts or parcels of the Property which the Redeveloper has completed, the Authority will also, upon proper substantial completion of the Improvements relating to any such part or parcel, issue a partial Certificate of Completion and certify to the Redeveloper that such Improvements have been made in accordance with the provisions of this Agreement. These partial Certificates of Completion may be issued for completion of work in accordance with the Plans and Specifications on various elements or sub-elements of the Improvements including, without limitation, the Commercial Component; the retail portion of the Commercial Component; the office portion of the Commercial Component; the health club portion of the Commercial Component; the Residential Component; any floor of said Residential Component; the Plaza; and the sidewalks. In the case of the Residential Component, a partial Certificate of Completion shall issue for the entire Component upon Condominium Substantial Completion (hereinafter defined), and a partial Certificate of Completion shall issue for any floor in said Component upon installation of the demising walls of all condominium units on such floor and upon satisfaction of the conditions set forth in subparts (2) and (3) of the definition of Condominium Substantial Completion. "Condominium Substantial Completion" shall mean that (1) the demising walls (exclusive of wall treatments) of all condominium units have been installed, (2) the separate, street level, lobby entrance for the condominium portion of the Building has been substantially completed, and (3) all exterior work on the Building and the roof have been substantially completed subject to punch-list items. The issuance of a Certificate of Completion or partial Certificate of Completion for a particular Component (or portion thereof) shall not be conditioned upon the completion of work with respect to the other Component or with respect to the Improvements to be constructed on property other than the Property. All such certifications shall mean and provide (and the Deed shall so state): (1) that any party purchasing, leasing or occupying such individual part of the Property pursuant to the authorization herein contained shall not (because of such purchase or lease) incur any obligation with respect to the construction of the Improvements relating to such part or parcel or to any other part or parcel of the Property; and (2) that neither the Authority nor any other party shall thereafter have or be entitled to exercise with respect to any such individual part or parcel so sold (or in the case of a lease, with respect to the leasehold

interest) any rights or remedies or controls that it may otherwise have or be entitled to exercise with respect to the Property as a result of a default in or breach of any provisions of this Agreement or the Deed by the Redeveloper or any successor in interest or assign, unless (i) such default or breach be by the purchaser or lessee, or any successor in interest or assign of or to such individual part or parcel with respect to the agreements and obligations required to be assumed pursuant to Section 4.01 of this Agreement, and (ii) the right, remedy, or control relates to such default or breach. All certifications provided for in this Section shall be in such form as will enable them to be recorded in the Registry of Deeds for Suffolk County, Commonwealth of Massachusetts. If the Authority shall refuse or fail to provide any certification in accordance with the provisions of this Section, the Authority shall, within thirty (30) days after receipt by the Authority of a written request by the Redeveloper, provide the Redeveloper with a written statement, indicating in what respects the Redeveloper has failed to complete the Improvements (or the portion thereof to which the Certificate shall apply) in accordance with the provisions of this Agreement or is otherwise in default and what measures or acts will be necessary, in the reasonable opinion of the Authority, for the Redeveloper to take or perform in order to obtain such certification. Notwithstanding the immediately succeeding paragraph, if the Authority shall refuse or fail to provide the Redeveloper and any such mortgagee with such a written statement within thirty (30) days of a request therefor by the Redeveloper or any such mortgagee, the instruments certifying that substantial completion of the Improvements (or the portion thereof to which the Certificate shall apply) in question shall be deemed to have been issued and the Redeveloper and any such mortgagee shall be entitled to obtain specific performance ordering such instrument to issue.

The Redeveloper agrees that the Authority shall be under no obligation to issue a partial Certificate of Completion until such time as the Authority has had a reasonable opportunity to inspect the Improvements (or the portion thereof to which the Certificate shall apply) constructed pursuant to the provisions of this Agreement and the Plans and Specifications, provided, however, that except as required by Section 3.02(c) above, the Authority shall not be required to make an inspection hereunder unless the

Redeveloper has requested in writing that the Authority issue a Certificate of Completion.

Section 3.05: Prompt Payment of Obligations

The Redeveloper shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons, firms and corporations doing any work, furnishing any materials or supplies or renting any equipment to the Redeveloper or any of its contractors or subcontractors in connection with the development, construction, furnishing, repair or reconstruction of any of the Improvements required by this Agreement to be constructed upon the Property, provided, however, that the Redeveloper may withhold and contest and/or litigate any such payments owed, or claimed to be owed, in connection with the Improvements. Neither this provision, nor any other provision of this Agreement, shall be construed to create rights in anyone who is not a party to this Agreement.

Section 3.06: Non-Discrimination in Employment

The Redeveloper agrees that in the construction of the Improvements in accordance with the provisions of this Agreement:

(a) The Redeveloper will not discriminate against any employee or applicant for employment because of race, color, sex, sexual preference, religion or national origin. The Redeveloper will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual preference or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Redeveloper agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Authority setting forth the provisions of this non-discrimination clause.

(b) The Redeveloper will, in all solicitations or advertisements for employees placed by or on behalf of the Redeveloper, state that all qualified applicants will receive

consideration for employment without regard to race, color, religion, sex, sexual preference or national origin.

(c) The Redeveloper will send to each labor union or representative of workers with which the Redeveloper has a collective bargaining agreement or other contract of understanding, a notice, to be provided advising the said labor union or worker's representative of the Redeveloper's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Redeveloper will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of the rules and regulations and relevant orders of the Secretary of Labor.

(e) The Redeveloper will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, and will permit access to the Redeveloper's books, records, and accounts by the Authority, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(f) In the event of the Redeveloper's noncompliance with the non-discrimination clauses of this Section, or with any of the said rules, regulations, or orders, the provisions of Section 8.06 hereof shall be applicable with respect to the applicable Component.

(g) The Redeveloper will include the provisions of Paragraphs (a) through (g) of this Section in every employment contract, whether union or nonunion, and in every other contract or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of his contractors, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, so that such provisions will be binding upon each such contractor, subcontractor, or vendor as the case

may be. The Redeveloper will take such action with respect to any construction contract, subcontract, or purchase order as the Authority may reasonably direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Redeveloper becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Authority, the Redeveloper may request the United States to enter into such litigation to protect the interest of the United States.

(h) The provisions of this Section 3.06 shall not be applicable to, or binding upon, any Unit Owner who hereafter purchases a residential condominium unit in the Building or to any condominium association to which such Unit Owners may belong.

For the purpose of including such provisions (a) through (g) in any construction contract, subcontract, or purchase order, as required hereby, the first three lines of this Section shall be changed to read: "During the performance of this Contract, the Contractor/Subcontractor/Vendor agrees as follows:" and the term "Redeveloper" as it appears throughout this Section shall be changed to "Contractor", "Subcontractor", or "Vendor", as the case may be.

Section 3.07: Access to the Property by Authority and City Personnel

The Redeveloper shall from time to time until the expiration of the term of the Plan, at all reasonable hours, give to the duly authorized representatives of the Authority and the City, reasonable access, with notice, for inspection purposes to any and all portions of the Improvements (exclusive of the residential condominium units following issuance of the applicable Certificate of Completion for such units) to be constructed on the Property by the Redeveloper and to all open areas surrounding the same.

Section 3.08: Resident Construction Employment Plan; Employment Opportunity Plan

(a) The Redeveloper shall submit a plan, to be known as a Boston Residents Construction Employment Plan, to the Director, which Plan shall set forth in detail the Redeveloper's plans to ensure that its general contractor, and those engaged by said general contractor for construction of the Improvements, on a

craft-by-craft basis, meet the following Boston Residents Construction Employment Standards: (i) at least 50% of the total employee worker hours in each trade shall be by bona fide Boston residents; (ii) at least 25% of the total employee worker hours in each trade shall be by minorities; and (iii) at least 10% of the total employee worker hours in each trade shall be by women. The Redeveloper shall include in the plan provisions for monitoring, compliance and sanctions. The Redeveloper shall submit the plan prior to the issuance of a building permit for the Improvements. For the purposes of this paragraph (a), worker hours shall include on-the-job training and apprenticeship positions.

(b) The Redeveloper shall formulate an Employment Opportunity Plan that shall provide for the Redeveloper's good faith efforts to achieve a goal that 50% of the permanent employment opportunities created by the Building shall be made available to Boston residents. The Redeveloper shall submit the plan on or before December 18, 1986, the first anniversary of the execution of the DIP Agreement.

Section 3.09: Handicap Access

It is the general policy of the Authority that all buildings constructed or rehabilitated in urban renewal project areas shall be so designed to accomodate persons who are physically handicapped. In furtherance of this policy, and without limiting Redeveloper's obligation to comply with all legal requirements applicable thereto, the Plans and Specifications shall include provisions conforming, insofar as practical, with the rules and regulations promulgated by the Architectural Barriers Board of the Commonwealth of Massachusetts, which rules and regulations, as amended from time to time, are hereby incorporated by reference.

ARTICLE 4

TRANSFER AND MORTGAGE OF REDEVELOPER'S INTEREST

Section 4.01: General Terms Relating to Transfer of Interest in Property by Redeveloper

(a) Except as provided in subsection (b) below, prior to the completion of the construction of the applicable Component on the Property in accordance with Section 3.04 of this Agreement, no

interest or portion thereof in such Component (which term shall be deemed to include successors in interest of such interest), shall be transferred, or caused or suffered to be transferred, except an involuntary transfer caused by the death or incapacity of any such party or except as provided in Section 4.01(b) or Section 4.02 hereof, without the written approval of the Authority; nor without such written approval shall there be any other change in the ownership of such interests or in the relative distribution thereof or change in identity of the parties in control, or in the degree of control of the Redeveloper, by any other methods or means. The Redeveloper shall advise the Authority of any and all such proposed changes in ownership and shall in addition furnish the Authority with an up-to-date list of all present and proposed new owners thereof and with any other information relating to such proposed change which the Authority shall reasonably require. Once a Certificate of Completion has been issued hereunder for a particular Component, there shall be no limitation imposed hereby relative to the ownership of the Component in question.

(b) Notwithstanding the terms and conditions of the aforesaid subsection (a), subsection (c) and Section 4.02 to the contrary, the Authority hereby expressly acknowledges and consents to a transfer and assignment at any time by the Residential Redeveloper and/or the Commercial Redeveloper and/or by any holder of a beneficial interest in either, upon written notice to the Authority, of all or part of their right, title and interest (i) in this Agreement, (ii) in the Property, and/or (iii) as designated Redeveloper by the Authority for the Project, to any entity that is controlled by Ronald M. Druker, his estate or family members (provided, in the case of entities controlled by family members, that said Ronald M. Druker, for so long as he shall be alive and legally competent, retains a controlling interest), State Street Bank & Trust Company as Trustee of the AT&T Master Pension Trust or any combination of the foregoing, or to any financial institution such as a bank, trust company, insurance company, pension fund, mortgage company or investment company providing construction or permanent financing for construction of the Improvements, or any subsidiary or controlled affiliate of any of the foregoing financial institutions, including, without limitation, State Street Bank & Trust Company, as Trustee.

(c) The Redeveloper agrees that it will not, after delivery of the Deed and prior to the issuance of a Certificate of

Completion for that part of the Improvements in question, make or suffer to be made, any assignment, lease, or any other manner of transfer of its interest in the Property or portion thereof, or in this Agreement, except (i) as provided in Section 4.02 hereof, (ii) for the entering into and performance under purchase and sale agreements for the sale of units in the Residential Component, (iii) for leases of office, retail, restaurant, garage or other space within the Improvements which are to be performed subsequent to such completion, and (iv) for construction, utility and other easements and agreements, including, without limitation, agreements relating to the building at 250 Boylston Street, unless the Redeveloper shall have complied with the following conditions:

1. The transferee or transferees shall have been approved as such in writing by the Authority.
2. The transferee or transferees, subject to Section 9.10 hereof, by valid instrument in writing, satisfactory to the Authority, shall have expressly assumed for themselves and their successors and assigns, and directly to and for the benefit of the Authority, all obligations of any person or persons, including the Redeveloper, to begin, complete, and/or maintain and operate, as applicable, the Residential or Commercial Component, as applicable, and all obligations of the Redeveloper provided for in this Agreement with respect to such Component, including the obligations of performance in accordance with the Plan. Provided, that: the fact that any transferee of, or any other successor in interest whatsoever to, the Residential or Commercial Component, as applicable, or any part thereof, shall for whatever reason, not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Authority) relieve or except such transferee or successor of or from obligations, conditions, or restrictions, or deprive or limit the Authority of or with respect to any rights or limitations or controls with respect to the Residential or Commercial Component, as applicable, or the construction of the Residential or Commercial Component, as applicable; it being the intent of this, together with other provisions of this Agreement, that

(to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of or change, with respect to ownership, possession, or control, shall operate legally or practically, to deprive or limit the Authority of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Residential or Commercial Component, as applicable, and the construction of the Residential or Commercial Component, as applicable, that the Authority would have had, had there been no such transfer or change. In the event of any such transfer without such assumption of obligations, the Redeveloper of the Component in question shall pay to the Authority the expenses and costs of any actions or proceedings instituted to enforce all such obligations, conditions, and restrictions, and all of the Authority's said rights, remedies, and controls as against such transferee. Therefore, in the absence of a specific written agreement by the Authority to the contrary, no such transfer or approval thereof by the Authority shall be deemed to relieve the Redeveloper of the Component in question or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Residential or Commercial Component, as applicable, from any of its obligations with respect hereto.

3. There have been submitted to the Authority for review, and the Authority has approved, all instruments and other legal documents involved in effecting the proposed transfer; provided, however, that the Redeveloper shall not be required to submit any partnership agreements to the Authority, but may be required to provide supporting information as may be reasonably required by the Authority for its accurate understanding of the contemplated transfer prior to its approval of the transfer, including, without limitation, copies of the instruments and other legal documents filed with public offices to effect such transfer.

(d) In the event of any transfer by Redeveloper of a Component as permitted in this Section 4.01, all obligations, responsibilities and liability of Redeveloper under this Agreement with respect to such Component shall cease, and the Authority shall look only to the transferee for the satisfaction of such obligations and responsibilities, and the assertion of such liability, provided, however, that the Redeveloper shall remain liable for breaches of its obligations and responsibilities hereunder occurring prior to such transfer. If the transferee shall fail or refuse to effect the cure of any violation under this Agreement, the Authority may institute such actions or proceedings against the transferee as the Authority deems appropriate, including actions and proceedings to compel specific performance, subject to the provisions of Section 8.05 of this Agreement. Payment of all costs and expenses that may be incurred by the Authority in instituting and prosecuting such action or proceeding shall be governed by Section 6.01 of this Agreement.

(e) After completion of any portion of the Improvements in question, as certified by the Authority, the Redeveloper may assign or otherwise transfer any such portion of or interest in the Property, or any interest in the Redeveloper may be assigned or transferred, subject to the provisions of this Agreement and the Plan.

Section 4.02: Mortgage of Property by the Redeveloper

Notwithstanding any other provisions of this Agreement, the Redeveloper shall at all times have the right to encumber, pledge, or convey its rights, title and interest in and to the Property, or any portion or portions thereof, and holders of beneficial interests in the Redeveloper, if any, shall have at all times the right to encumber their individual beneficial interests, by way of a bona fide mortgage to secure the payment of any loan or loans obtained by the Redeveloper to finance the purchase of the Property (or any portion thereof), development, construction, repair or reconstruction of any of the Improvements required to be constructed by the Redeveloper on the Property by the Plan and this Agreement, or to refinance any outstanding loan or loans theretofore obtained by the Redeveloper or individual holders of beneficial interests therein for any such purpose; provided, however, that the Redeveloper and its individual holders of beneficial interests, as the case may be, shall give prior written

notice to the Authority of its or their intent to exercise such rights hereunder, including in such notice the name(s) and address(es) of such mortgagee(s) and any other information regarding the mortgagee(s) which the Authority may reasonably require. The limitations contained in this Agreement relating to the Redeveloper's right to encumber, pledge or convey its rights, title and interest in and to each of the Components by way of a bona fide mortgage shall terminate with respect to each such Component on the date of the issuance of the Certificate of Completion for such Component.

The holder of any such mortgage or its designee (including a holder, or its designee, who obtains title to the Property or any portion thereof by foreclosure or action in lieu thereof, but not including a party who obtains title through such holder or any purchaser at a foreclosure sale other than the holder, or its designee) shall not be obligated by this Agreement to construct or complete the Improvements or to guarantee such construction or completion, but shall have the options described in Section 4.03.

Section 4.03: Rights and Duties of Mortgagee Upon Acquisition
Prior to Completion

(a) If a mortgagee or its designee, through the operation of its contract to finance any portion of the Improvements required by this Agreement to be constructed by the Redeveloper on the Property, or by foreclosure, or if a purchaser at a foreclosure sale, acquires fee simple title to the Property or any part thereof prior to the completion of the Component in question, the mortgagee or its designee or such purchaser shall have the following options:

1. complete construction of such Component in accordance with the Plans and Specifications, the Plan and this Agreement, and in all other respects comply with the provisions of this Agreement, or
2. sell, assign, or transfer fee simple title to the Component or any part thereof to a purchaser, assignee or transferee who shall not require approval by the Authority, but who shall expressly assume all of the agreements and obligations of the Redeveloper under this Agreement in respect to the Component in question or

part thereof, by written instrument satisfactory to the Authority and recorded forthwith in the Suffolk County Registry of Deeds, provided, however, that pre-sales or other transfers to Unit Owners of residential condominium units in the Building shall not require the execution of any such assumption agreement, or

3. subject to the rights of any vendees of presold residential condominium units, reconvey fee simple title to the Parcel or part thereof to the Authority, in which event the provisions of Section 8.02 relative to resale shall apply.

(b) In the event that a mortgagee or its designee or such other purchaser elects to complete construction pursuant to (a)(1) above, or sells, assigns or transfers pursuant to (a)(2) above, the Authority shall extend the time limits set forth in Section 3.03 herein as shall be reasonably necessary to complete construction of the Improvements, and upon such completion, the mortgagee, designee or purchaser, as the case may be, shall be entitled to the Certificate(s) of Completion pursuant to Section 3.04 hereof.

Section 4.04: Rights and Duties of Mortgagee Upon Acquisition
After Completion

If a mortgagee, through the operation of its contract to finance the Improvements required by this Agreement to be constructed by the Redeveloper on the Property or by foreclosure, acquires fee title to the Property or any portion thereof after completion of all the Improvements, the mortgagee for the period during which said mortgagee holds such fee title, shall comply with applicable provisions of this Agreement. In no event shall any mortgagee be liable for breaches of this Agreement prior to the time it acquires title or takes possession of the Property (or portion thereof) or after it shall convey title or possession, provided that development, ownership and operation of the Property (or portion thereof) shall be subject to compliance with this Agreement and shall require corrections of any such breaches within the time period allowed (as extended hereunder).

Notwithstanding the immediately preceding sentence, in no event shall any mortgagee ever be subject to personal liability for breaches of this Agreement whether or not it owns or controls the

property (or portion thereof), any such liability being hereby limited to said mortgagee's interest in the Property (or portion thereof). A mortgagee of one Component shall not be responsible for any obligations associated with the other Component. Further, a mortgagee of any particular condominium unit shall not be responsible for any obligations associated with other portions of the Building except such unit.

ARTICLE 5

PROVISIONS RELATING TO OPERATION AND MAINTENANCE

Section 5.01: Maintenance and Operation of Improvements

With respect to each Component, the Redeveloper of the applicable Component shall, at all times until the expiration of the term of the Plan, keep the applicable Component and all Improvements in the applicable Component in good and safe condition and repair (unless such Improvements shall have become uninsurable), and in the occupancy, maintenance and operation of the applicable Component and the Improvements in the applicable Component, shall comply with the terms and conditions of the Plan and with all laws, ordinances, codes and regulations applicable thereto.

In amplification of this undertaking, the Commercial Redeveloper agrees pursuant to that certain Indemnification and Maintenance Agreement, dated March 3, 1986, between the Redeveloper and the City of Boston, a copy of which is attached hereto and incorporated herein as Exhibit H, and otherwise, to maintain the Plaza and the sidewalks adjacent to the Improvements in a clean and neat condition; to replace trees and shrubs, paving materials, lighting fixtures, benches and other street furniture, and to maintain the same in good and workable condition; and to clear snow and ice so that passageways are cleared to facilitate pedestrian flow.

Section 5.02: Additions or Subtractions to Completed Improvements

After the Improvements required by the Plan and this Agreement to be constructed by the Redeveloper on the Property or any portion thereof have been completed, the Redeveloper shall not, until the expiration of the term of the Plan, reconstruct,

demolish, subtract therefrom, make any additions thereto or extensions thereof or change the materials, design, dimensions, or color thereof, if such reconstruction, demolition, subtraction, addition, extension or change will materially affect the external appearance of the Major Design and Exterior Elements, without the prior written approval of the Authority, which shall not be unreasonably withheld or delayed. In the event the Redeveloper shall fail to comply with the foregoing requirement, the Authority may within a reasonable time after its discovery thereof, direct in writing that the Redeveloper so modify, reconstruct or remove such portion or portions of the Improvements as were reconstructed, demolished or subtracted from or added to or extended or changed without the prior written approval of the Authority. The Redeveloper shall promptly comply with such a directive, and shall not proceed further with such reconstruction, demolition, subtraction, addition, extension or change until such directive is complied with. Any such reconstruction, demolition, subtraction, addition, extension or change undertaken pursuant to the prior written approval of the Authority shall in all respects be in accordance with and conform to the provisions of the Plan.

Section 5.03: Linkage Payment

The Commercial Redeveloper shall be responsible for a Linkage Payment in the amount calculated in accordance with and subject to the terms and conditions of the DIP Agreement.

Section 5.04: Supplemental Payments of the Redeveloper

In addition to the Linkage Payment, the Commercial Redeveloper agrees to make the following payments (referred to herein as the "Supplemental Payments"):

(a) The Commercial Redeveloper agrees to contribute the difference between One Million Dollars (\$1,000,000) and the amount of the Linkage Payment to the Boston Housing Partnership, Inc., for a joint private-public neighborhood housing program. Such payment shall be made in twelve (12) equal annual installments at the times prescribed in paragraph (c) of Section 5.03 for the payment of installments of the Linkage Payment.

(b) Commencing at initial occupancy (defined herein as occupancy of ninety-five percent (95%) of the Commercial

Component) in the Commercial Component, a per annum contribution of Seventy-Five Thousand Dollars (\$75,000.00) shall be made by the Commercial Redeveloper to an entity to be designated by the Commercial Redeveloper and the Authority for the maintenance and improvement of the Boston Public Garden. Said annual contributions shall be made for the life of the Building, and shall be escalated every three (3) years by a percentage equal to the cumulative change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) relating to Boston and issued by the Bureau of Labor Statistics of the United States Department of Labor from the date of the then immediately preceding payment until the third anniversary of such date, but in no event by more than five percent (5%). If the Bureau of Labor Statistics discontinues such index, a comparable index shall be chosen by mutual agreement of the parties.

Notwithstanding anything to the contrary contained herein, the obligations contained in this Section 5.04 shall be obligations of the Commercial Redeveloper, and its successors and assigns, and not the Residential Redeveloper, or its successors and assigns, the Authority agreeing to look solely to the former, and not to the latter, for any obligations contained in or arising out of this Section 5.04. The Commercial Redeveloper acknowledges that, subject to the provisions of Section 9.10, this Agreement in general and specifically the provisions of Sections 5.03 and 5.04 are binding and enforceable under contract law upon, and inure to the benefit of the parties, their successors, assigns and legal representatives, notwithstanding amendment or repeal of Article 26 of the Zoning Code or a court decision having the effect of an amendment or repeal of such Article.

ARTICLE 6

INDEMNIFICATION

Section 6.01: Reimbursement of Authority in Respect of Certain Litigation

The applicable Redeveloper shall pay all reasonable costs and expenses, and the amounts of all judgments and decrees, which may be incurred by the Authority in any proceedings brought to enforce the obligations of the applicable Redeveloper set forth in the provisions of this Agreement to the extent the Authority prevails.

It is expressly understood, however, that the mortgagee under any mortgage permitted hereunder shall not be liable to the Authority for any costs, expenses, judgments, decrees or damages which shall have accrued against such Redeveloper except that a mortgagee who becomes a mortgagee after, and who acquires title after, such Redeveloper has become liable for any costs, expenses, judgments, decrees or damages, shall take subject to (but not be personally liable for) such costs, expenses, judgments, decrees or damages associated with the Component in question and incurred prior to the mortgage in question.

ARTICLE 7

INSURANCE

Section 7.01: Insurance Coverage

(a) Until the expiration of the term of the Plan, the Redeveloper with respect to the applicable Component shall keep all of the insurable property and equipment in respect of such Component insured by fire and extended insurance and additional risk insurance to the same extent and amounts which are normally required by institutional mortgagees in the use of similar property and equipment in the City. Such insurance shall be in an amount sufficient to comply with the co-insurance clause applicable to the location and character of the property or equipment, and, in any event, in amounts not less than eighty per centum (or eighty per centum in the case of extended coverage insurance) of the current cash value of such property or equipment. All such insurance shall be by standard policies, obtained from financially sound and responsible insurance companies authorized to do business in Massachusetts, and shall have attached thereto a clause making the loss payable to the Redeveloper, the condominium association of Unit Owners, as insurance trustees, and the mortgagees, as their respective interests may appear.

(b) Each insurance policy shall be written to become effective at the time the Redeveloper becomes subject to the risk or hazard covered thereby, and shall be continued in full force and effect for such period as the Redeveloper is subject to such risk or hazard.

(c) Certificates of such policies and renewals shall be filed with the Authority.

Section 7.02: Non-Cancellation Clause

All insurance policies shall provide that any cancellation, change or termination thereof shall not be effective with respect to the Authority until after at least ten (10) days' prior notice has been given to the Authority to the effect that such insurance policies are to be cancelled, changed, or terminated at a particular time.

Section 7.03: Authority May Procure Insurance if Redeveloper Fails to Do So

If the Redeveloper at any time refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required pursuant to this Agreement, the Authority at its option, may procure or renew such insurance, and all amounts of money paid therefor by the Authority shall be payable by the applicable Redeveloper to the Authority, with interest thereon at the rate of twelve per centum (12%) per annum from the date the same were paid by the Authority to the date of payment thereof by such Redeveloper. The Authority shall notify the Redeveloper in writing of the date, purposes, and amounts of any such payments made by it.

Section 7.04: Redeveloper's Obligations with Respect to Restoration and Reconstruction

(a) Whenever any Improvements, or any part thereof, constructed on the Property shall have been damaged or destroyed prior to the expiration of the term of the Plan, the applicable Redeveloper, to the extent it owns or controls any part of the Building, and consistent with the provisions and requirements of the condominium statute, M.G.L. Ch. 183A, shall proceed promptly to establish and collect all valid claims which may have arisen against insurers or others based upon any such damage or destruction. All proceeds of any such claim and any other monies provided for the reconstruction, restoration or repair of any such Improvements, to the extent in excess of \$250,000.00 (such amount to be increased from time to time by percentage increases in an index reasonably reflecting construction cost increases from and

after the date hereof) and unless otherwise required to be distributed by any mortgagee, shall be deposited in full in a separate account of the Redeveloper or of any mortgagee.

(b) The insurance money and any other proceeds so collected shall be used and expended for the purpose of fully repairing or reconstructing the Improvements which have been destroyed or damaged to a condition at least comparable to that existing at the time of such damage or destruction to the extent that such insurance money and other proceeds may permit. Any excess proceeds after such repair or reconstruction has been fully completed shall be retained by the Redeveloper, subject to the rights of any mortgagee of record permitted hereunder.

(c) The Redeveloper, with the written approval of the Authority and any mortgagee of record permitted hereunder, may determine that all or any part of any such damage to or destruction of such Improvements shall not be reconstructed, restored, or repaired, and in such event, the proceeds of any claims against insurers or others arising out of such damage or destruction, to the extent not used for such reconstruction, restoration, or repair, shall be retained by the Redeveloper, subject to the rights of such mortgagee.

(d) Any reconstruction or repair undertaken pursuant to the provisions of this Section shall in all material respects be in accordance with, and conform to, the provisions of the Plan, the Plans and Specifications, and the provisions of this Agreement.

(e) In no event shall the Redeveloper be obligated to incur costs for repair and reconstruction in excess of the proceeds, if any, received from claims that may have arisen and been settled against the insurers on account of damage or destruction for construction, restoration or repair and that the mortgagee permits to be used therefor. To the extent that insufficient monies are received, the Redeveloper's obligation to reconstruct, restore or repair shall be reduced, provided that any such reduced reconstruction, restoration or repair shall be subject to approval by the Authority with respect to Major Design and Exterior Elements. Redeveloper agrees to exercise all reasonable efforts to obtain permits necessary to reconstruct, restore or repair such Improvements, but Redeveloper shall in no event be obligated under this Agreement to reconstruct, restore or repair such Improvements

if applicable laws or regulations do not allow the same to be accomplished.

Section 7.05: Commencement and Completion of Reconstruction

Subject to the provisions of Section 7.04 hereof, the Redeveloper shall commence to reconstruct or repair any Improvements and equipment of the applicable Component, or any portion thereof, which have been destroyed or damaged prior to the expiration of the term of the Plan, within a period not to exceed six (6) months after the insurance or other proceeds with respect to such destroyed or damaged property have been received by the Redeveloper or any mortgagee (or, if the conditions then prevailing require a longer period, such longer period as the conditions may mandate), and shall well and diligently and with dispatch prosecute such reconstruction or repair to completion, such reconstruction or repair in any event to be completed within twenty-four (24) months after the start thereof or such longer period as is reasonably required therefor.

ARTICLE 8

RIGHTS, REMEDIES AND PROCEDURES IN THE
EVENT OF A BREACH BY REDEVELOPER

Section 8.01: Failure or Refusal by Redeveloper to Purchase
Fee Simple Title and Accept Possession

If the Redeveloper shall fail or refuse to complete the purchase and accept possession of the Parcel upon proper tender of conveyance by the Authority pursuant to this Agreement, or if there is any unauthorized change in the ownership of the Redeveloper or with respect to the identity of the parties in control of the Redeveloper or degree thereof prior to the conveyance of the Parcel to the Redeveloper, the Authority shall have the right, after ninety (90) days' written notice to the Redeveloper of such failure or violation, in its sole discretion, upon an additional ninety (90) days' prior written notice to the Redeveloper, to terminate all of the Authority's obligations to the Redeveloper hereunder, provided the Redeveloper does not cure any such failure or violation within either of said 90-day periods.

Section 8.02: Consequence of Breach by Redeveloper With Respect To Commencement and Completion of Construction, or Unauthorized Transfers of Interest

If, prior to completion of the applicable Component:

1. the Redeveloper shall fail to perform its obligations under this Agreement with respect to commencement, diligent prosecution, or completion of construction of such Component; or

2. there is, in violation of Sections 4.01(a) or 4.01(b) of this Agreement, a transfer of the Parcel or any part thereof or a change in the ownership or control of or interests in the Redeveloper;

then, the Authority may, within a reasonable time after discovery thereof by the Authority, in writing notify the Redeveloper of such failure or violation. The Redeveloper shall thereupon have one hundred and eighty (80) days from the receipt by it of such written notice to cure such failure or violation (or if such failure or violation cannot be cured within one hundred and eighty (80) days, to commence to cure the same within said period and diligently to proceed thereafter to complete such curing). If the Redeveloper does not cure such failure or violation within the aforesaid periods, the Authority shall give a second notice of such failure or violation and the expiration of the grace period to Redeveloper and to each of the mortgagees, holders of building loan agreements and/or lenders from whom the Redeveloper has obtained loans for redevelopment operations and who have requested the notice referred to in Section 8.03 hereof.

(a) If the Redeveloper does not cure such failure or violation within the aforesaid periods and if the holders of record of building loan agreements and/or mortgages do not exercise their rights to cure such violation or failure (as provided in Section 8.04 hereof), an Event of Default shall be deemed to exist, but only with respect to the Component in question.

The Authority may invoke the remedies hereunder and under Section 8.02(b) on account of an Event of Default under this Article at any time within a two year period after the date of the notice that initially triggered the Event of Default in question.

Failure of the Authority timely to invoke such remedy shall be deemed a waiver of the particular Event of Default and of the Redeveloper's obligations herein that underlie such Event of Default with regard to the Component in question.

- (i) If an Event of Default relating to either Component occurs prior to the commencement of any substantial construction of either Component (demolition and surface site work shall not be considered substantial construction, but the good faith commencement of excavation, foundation and other subsurface work shall constitute substantial construction), then the Authority's sole remedy shall be to cause a reconveyance of the Parcel to the Authority pursuant to this Section 8.02 (a) and the related provisions of this Article, and this Agreement shall terminate without recourse to the parties except that the provisions of Section 8.02(c) shall not terminate;
- (ii) If an Event of Default relating to either Component occurs after commencement of substantial construction of either Component, then the Authority's sole remedy shall be to institute such action and proceedings as may be appropriate against the Redeveloper of the Component in question, including actions and proceedings to compel specific performance and payment of all damages, expenses and costs (subject to the provisions of Section 8.05). The provisions of this subsection (ii) shall apply separately to each Component.

To the extent that the Authority invokes the remedy provided in clause (i) above, the Redeveloper shall promptly transfer possession of, and reconvey, the Parcel together with all of the Improvements thereon, to the Authority without cost to the Authority, by Quitclaim Deed, provided that such reconveyance shall be subject to any existing building loan agreements and mortgages thereon permitted under this Agreement. If the Redeveloper shall fail so to reconvey, the Authority may institute such actions or proceedings as it may deem advisable as well as proceedings to compel specific performance and the payment of damages, expenses and costs by the Redeveloper. This does not preclude the Redeveloper or any mortgagee from seeking injunctive relief, and the Authority will cooperate with the Redeveloper or

any such mortgagee in seeking a speedy trial. The rights and remedies of any mortgagee under this Agreement shall not be limited or reduced by the fact that any such mortgagee may have an equity interest in the Property, the Improvements or any part thereof.

(b) In the event of an Event of Default under clause (i) above, the Authority also shall have the right, after ten (10) days' prior written notice to the Redeveloper, to seek a judicial determination of the Authority's right to re-enter and take possession of the Parcel and to terminate (and revest in the Authority) the estate conveyed by the Deed to the Redeveloper, it being the intent of this, together with other provisions of this Agreement, that the conveyance of the Parcel to the Redeveloper shall be made upon, and that the Deed shall contain, a condition subsequent to the effect that in the event of such failure to cure, and upon giving notice to the Redeveloper and obtaining the judicial determination indicated above, the Authority, at its option, subject to the rights of any vendees of pre-sold residential condominium units, may declare a termination in favor of the Authority of the title, and of all the rights and interests in the Parcel and that such title, and all rights and interests of the Redeveloper, and any assigns or successors in interest, in the Parcel, shall revert to the Authority; provided, that such condition subsequent and any revesting of title as a result thereof in the Authority shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way, the lien of any mortgage authorized by this Agreement, or any rights or interests provided herein for the protection of the holders of such mortgages.

(c) If the Redeveloper or a mortgagee reconveys to the Authority, pursuant to this Section 8.02 or Section 4.03 hereof, the Authority shall undertake with due diligence and in a commercially reasonable manner to resell the Parcel so reconveyed and the Improvements thereon, subject to all of the provisions of the Plan. The resale shall be for cash only, unless the first mortgagee of record otherwise directs or approves. The proceeds of such resale, together with the net income, if any, derived by the Authority from its operation and management of the Parcel subsequent to such reconveyance shall be used:

- First: to pay all taxes, payments in lieu of taxes, public charges and other sums owing to the City with respect to the Parcel, except for Development Impact Project exactions (i.e., so-called linkage payments), up to the time of such resale (or in the event the Parcel is exempt from taxation during the period of ownership thereof by the Authority, an amount equal to such taxes as would have been payable if the Parcel were not so exempt);
- Second: in their respective order of priority to pay any and all mortgage indebtedness permitted or authorized by this Agreement and to make all and whatever payments may be necessary to discharge any other encumbrances or liens existing or threatened on the Parcel in favor of mechanics, materialmen or subcontractors;
- Third: to pay all Development Impact Project exactions owing to the City with respect to the Improvements on the Parcel or the Property or the portion thereof in question up to the time of such resale;
- Fourth: to reimburse the Authority for (i) all costs and expenses reasonably and proximately incurred by the Authority, including the salaries of Authority personnel, in connection with the recapture, management and resale of the Parcel and all administrative and overhead costs in connection therewith and (ii) all expenditures made or obligations incurred with respect to the making or completion of improvements on or for the Parcel for which it has not otherwise been reimbursed;
- Fifth: to reimburse the Redeveloper for one hundred percent (100%) of the fair market value as of the date of this Agreement of the Parcel;
- Sixth: to pay or reimburse the Authority for any amounts otherwise owing to the Authority from the Redeveloper in connection with the Parcel;

Seventh: to reimburse the Redeveloper for an amount calculated at the annual rate of 12.75% on 100% of the fair market value of the Parcel from the date of this Agreement through the date said value is reimbursed under Paragraph fifth of this Section 8.02(c);

Eighth: to reimburse the Redeveloper for and up to the amount expended by it in the purchase and improvement of the Parcel, less any profit theretofore realized by the Redeveloper from the disposition of any interest in the Parcel or in any individual part or parcel thereof, and any income realized by the Redeveloper from its use of the Parcel or such part or parcel, and

Ninth: any balance remaining shall remain the property of the Authority.

Section 8.03: Notices of Breaches to Mortgagees

If the Authority gives written notice to the Redeveloper of a default under this Agreement, the Authority shall forthwith furnish a copy of the notice to each of the mortgagees of record of the Property permitted under this Agreement. Failure to provide any such mortgagee with a copy of a notice of default shall render such notice invalid and ineffective. To facilitate the operation of this Section, the Redeveloper shall at all times keep the Authority provided with an up-to-date list of names and addresses of mortgagees and holders of building loan agreements from whom the Redeveloper has obtained loans as permitted under this Agreement. Any such mortgagee or holder may notify the Authority of its address and request that the provisions of Section 9.06 hereof as they relate to notices apply to it. The Authority agrees to comply with any such request.

Section 8.04: Mortgagee May Cure Breach of Redeveloper

If the Redeveloper has received notice from the Authority of a default under this Agreement and such breach is not cured by the Redeveloper before the expiration of the period provided therefor, the holders of record of building loan agreements or mortgages on the Property as permitted under this Agreement shall be entitled

to notice from the Authority stating that the Redeveloper has failed to cure any such default, and shall have the right to cure any such breach upon giving written notice of their intention to do so to the Authority within ninety (90) days after such holder receives such notice of breach, and said mortgagee shall thereupon proceed with due diligence to cure such breach. Any cure of a breach hereunder by a mortgagee shall be deemed a cure of said breach by the Redeveloper.

If any mortgagee elects so to cure any breach, a reasonable extension of time for performance will be granted by the Authority to enable the mortgagee, and its transferee, to obtain possession and control of the Property, or portion thereof in question, by foreclosure or otherwise, and to correct such breach. So long as the mortgagee or its transferee is diligently pursuing a cure of such breach, the Authority shall not invoke any of its remedies hereunder.

Section 8.05: Remedies for Other Breaches

It is understood by the parties hereto that in the event any party shall fail to comply with or shall violate any of the provisions of this Agreement, then the other party hereto may institute such actions and proceedings as may be appropriate, including actions and proceedings to compel specific performance and payment of all damages, expenses, and costs. Any such actions or proceedings by the Authority shall relate only to the Component in question, it being the intent hereof that the remedies provided herein (except as specifically provided otherwise) apply separately to each Component, and that default by the Redeveloper with respect to one Component shall not be deemed a default by the Redeveloper with respect to the other Component. Neither these remedies nor that class of remedies more particularly described in this Agreement shall be exclusive unless specifically so described, provided, however, that the remedies prescribed in Section 8.01 hereof for the defaults therein described respecting reconveyance are exclusive and that no other rights of the Authority to reconveyance are contained in or to be implied under this Agreement.

Section 8.06: Equal Opportunity Compliance Policy and Breach Thereof

If, at any time prior to the issuance of the final Certificate of Completion pursuant to the terms of Section 3.04 hereof, the Director shall find that the Redeveloper and/or its general contractor have failed to comply with the requirements of the Authority's "Equal Opportunity Compliance Policy" and the provisions of Section 3.06 hereof, the Director shall issue notice of such finding, setting forth the reasons therefor. Such notice shall be sent certified mail, return receipt requested, to the Redeveloper and its general contractor. Upon receipt of any such notice, the Redeveloper and the general contractor shall have 120 days to cure any such failure to comply, or if any such failure can not be cured within such period, said parties may commence and diligently pursue cure of the condition set forth in the Director's notice.

The Redeveloper and/or its general contractor, in addition to their right to cure any condition noticed by the Director, shall have the right to appeal such finding to the Authority within thirty (30) days of receipt of the notice thereof. Within thirty (30) days after receipt by the Authority of written notice of the Redeveloper's and/or its general contractor's intention to appeal said finding, or at the next regular meeting of the Authority, whichever is later, the Authority shall hear such appeal at a public meeting.

Upon the failure of the Redeveloper and/or its general contractor to appeal the finding of the Director, or upon a determination by the Authority, subsequent to any appeal, that the Redeveloper and/or its general contractor have failed to comply with the requirements of the Authority's "Equal Opportunity Compliance Policy" and the provisions of Section 3.06 of this Agreement, the Authority shall have the right to retain the amount deposited with the Authority, if any, pursuant to this Agreement, and still on deposit with the Authority, as full liquidated damages, but not as a penalty, without any deduction or offset whatsoever and without further liability to the Authority on the part of the Redeveloper. In the event there is no such deposit, all the remedies available to the Authority under Section 8.05 of this Agreement shall apply to the defaults described in this Section 8.06. Nothing herein shall limit the remedies which may be available to private persons affected by such defaults of the Redeveloper.

Upon the failure of the Redeveloper and/or its general contractor to appeal the finding of the Director, or upon the determination by the Authority, subsequent to an appeal of the finding, that the Redeveloper and/or its general contractor have failed to comply with the requirements of the Authority's "Equal Opportunity Compliance Policy" and the terms and provisions of Section 3.06 of this Agreement, the Director shall send a notice of his finding and any Authority action related thereto to the following:

1. Massachusetts Committee Against Discrimination in Housing
2. Association of General Contractors
3. The Building Trades Council
4. Mayor, City of Boston
5. Mortgagee, and
6. Such other interested parties as the Director may deem appropriate.

Section 8.07: Cross Easements

If the Authority invokes its remedy under Section 8.01(a)(i) or the Redeveloper or a mortgagee reconveys to the Authority pursuant to Section 4.03, then the Redeveloper (or such mortgagee) and the Authority agree each to grant easements to the other as may be required and appropriate for the construction and operation of the applicable Component on the property owned by each party.

ARTICLE 9

MISCELLANEOUS PROVISIONS

Section 9.01: Obligations and Rights and Remedies Cumulative and Separable

Subject to the provisions of Section 9.10, the respective rights and remedies of the Authority, the City of Boston, and the Redeveloper, whether provided by this Agreement, or by law, shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise, at the same or different times of any other such rights or remedies.

Section 9.02: Finality of Approvals

Where, pursuant to this Agreement, any document or proposed action by the Redeveloper is submitted by it to the Authority, and the Redeveloper has been notified in writing by the Authority that the same is approved or is satisfactory, such determination shall be conclusively deemed to be a final determination by the Authority with respect to such particular document or proposed action for which such approval or notice of satisfaction was given.

Where the consent, approval, authorization, determination, satisfaction, waiver or other action of the Authority is provided for or required hereunder, such consent, approval, authorization, determination, satisfaction, waiver or other action shall not be unreasonably withheld. If any such consent, approval, authorization, determination, satisfaction, waiver or other action is not given within ten (10) business days after receipt of notice from the Redeveloper (which notice shall clearly indicate that the Authority has ten (10) business days in which to act), notwithstanding Section 9.06 hereof, the Authority shall thereupon be deemed to have acted upon the issue in question in a manner favorable to the Redeveloper.

Section 9.03: How Agreement Affected by Provisions Being Held Invalid

If any provisions of this Agreement are held invalid, the remainder of this Agreement shall not be affected thereby, if such remainder would then continue to conform to the requirements of applicable laws, and of the Plan.

Section 9.04 Agreements to be Enforceable by Authority and United States

The agreements herein contained relating to each Component, which are expressed to be separate agreements running with each respective Component, shall be stated or incorporated by reference in any instrument of conveyance or lease relating to the applicable Component or any portion thereof or any interest therein and shall in any event and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by, the Authority (and

the United States in the case of the agreements provided in Section 3.01(a)(2) hereof) against the Redeveloper (including its successors and assigns to or of the applicable Component or any part thereof or any interest therein and any party in possession or occupancy of such Component or any part thereof). In amplification, and not in restriction of the provisions hereof, it is intended and agreed that the Authority shall be deemed a beneficiary of the agreement provided in Section 3.01(a)(2) hereof, both for and in its own right and also for the purpose of protecting the interests of the community and the other parties, public or private, in whose favor or for whose benefit such agreements have been provided, and such covenants shall be in force and effect, without regard to whether the Authority or the United States has at any time been, remains or is an owner or in possession of any land to, or in favor of, which the agreements relate.

It is the intention of the Authority that the benefit of the agreements running with the land which are contained in any instrument of conveyance relating to the Parcel shall be enforceable only by the Authority (and the United States in the case of the agreement provided in Section 3.01(a)(2) hereof) and those holding title to an interest in the Parcel and that such agreements shall not be enforceable by transferees of other land owned by the Authority in the area covered by the Plan.

Section 9.05: Authority's Members and Officers Barred From Interest

(a) No member, official or employee of the Authority shall have any personal interest, direct or indirect, in this Agreement or the Redeveloper, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interest or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official or employee of the Authority shall be personally liable to the Redeveloper or any successor in interest in the event of any default or breach by the Authority or for any amount which may become due to the Redeveloper or to its successors or on any obligations under the terms of this Agreement.

(b) After the date hereinabove first written, the Redeveloper shall not, without a prior finding by the Authority that such action is consistent with the public interest, employ in connection with its obligations under this Agreement, any person who has participated in the planning or execution of the Plan or a related project and who is named on any list which may be furnished by the Authority to the Redeveloper as having so participated, or permit any such person to directly or indirectly acquire an interest (except an interest based upon the ownership of its capital stock if such stock is publicly held or offered) in the Redeveloper or in the Property prior to the completion of the Improvements thereon in accordance with this Agreement and the Plan.

(c) The Redeveloper covenants that it has not employed or retained any company or person (other than a full-time bona-fide employee working for the Redeveloper) to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person any percentage, or brokerage fee, contingent upon or resulting from the execution of this Agreement.

Section 9.06: Approvals and Notices

Except as otherwise specifically provided in this Agreement, whenever under this Agreement consents, approvals, authorizations, determinations, satisfactions, waivers or other actions are required or permitted, such approvals, authorizations, determinations, satisfactions, waivers or other actions shall be effective and valid only when given in writing signed by a duly authorized officer of the Authority or Redeveloper, and shall be deemed given when deposited in the United States mail and sent registered or certified, postage prepaid, to the principal office of the party to whom it is directed, provided that such notice is delivered, or tendered for delivery, in the normal course, which offices are as follows:

Redeveloper: The Heritage Residential Realty Trust and
 The Heritage Commercial Realty Trust
 c/o The Druker Company
 50 Federal Street
 Boston, Massachusetts 02110

Authority: Boston Redevelopment Authority
 Director's Office
 City Hall Square
 Boston, Massachusetts 02201

With a copy,
in the case of
a notice to
the Authority,
to:

Boston Redevelopment Authority
Chief General Counsel
City Hall Square
Boston, Massachusetts 02201

The parties shall promptly notify each other of any change of their respective addresses set forth above.

Notice and other communications to mortgagees and holders of construction loan agreements shall be deemed given when deposited in the United States mail and sent registered or certified, postage prepaid, to the last known address of the party concerned, provided that such notice is delivered, or tendered for delivery, in the normal course.

Whenever any approval, authorization, determination, satisfaction, waiver or other action is required of the Authority pursuant to this Agreement and is assented to by the Director by instrument duly signed, this shall be deemed conclusive evidence of compliance with this Agreement.

Except where otherwise expressly stated to the contrary, the term "days" as used in this Agreement shall be deemed to refer to calendar days.

Section 9.07: Matters to be Disregarded

The titles of the several articles and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

Section 9.08: Obligations to Continue

Except as to obligations to be performed at or prior to the time of closing of the sale and conveyance of fee simple title to and delivery of possession of the Parcel, the provisions of this Agreement shall survive the time of closing and the sale and conveyance of fee simple title to and the delivery of possession of the Parcel to the Redeveloper, but, with respect to each portion of the Improvements, shall not survive issuance of the

Certificate of Completion by the Authority for any such portion, except to the extent stated herein or in the Deed.

Section 9.09: Excusable Delays

For the purposes of any of the provisions of this Agreement, neither the Authority nor the Redeveloper, as the case may be, shall be considered in breach of or default in its obligations hereunder in the event of unavoidable delays in the performance of such obligations due to causes beyond its control and without its fault or negligence, including but not restricted to, acts of God, or of the public enemy, acts of the Government, acts of the other party, fires, floods, or other casualties, epidemics, quarantine restrictions, labor disputes, litigation, freight embargoes, and unusually severe weather or delays of contractors or subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of such party shall be extended for the period of the enforced delay, provided that the party seeking the benefit of the provisions of this Section shall, within a reasonable period after the beginning of any such enforced delay, have first notified the other party thereof in writing stating the cause or causes thereof and requested an extension for the period of the enforced delay. In calculating the length of the delay, the Authority shall consider not only actual work stoppages but also any consequential delays resulting from such stoppages as well. In no event shall any financing difficulty or inability to secure a building permit (unless caused by the Authority or by matters beyond the Redeveloper's reasonable control) be a cause for an extension hereunder.

Section 9.10: Agreement Binding on Successors and Assigns

The respective provisions of this Agreement, in accordance with their terms, shall be binding upon, and shall inure to the benefit of, the respective successors and assigns of the Redeveloper and the public body or bodies succeeding to the interests of the Authority, and to any subsequent grantees of the Property, except as otherwise expressly provided herein.

Neither the Redeveloper nor any successor in title to the Property shall be liable for any breach hereof accruing after the

period during which it was owner of the applicable Component, except, with regard to the parcel(s) conveyed pursuant to Subsection (c) of Section 4.01 of this Agreement, such liability shall cease only upon issuance of the Certificate of Completion pursuant to Section 3.04 of this Agreement. No holder of any mortgage on any Component shall be deemed to be the owner thereof until it shall have foreclosed the mortgage thereon or shall have acquired title by deed in lieu of foreclosure.

The Authority agrees to look only to the assets of the Redeveloper with respect to the Component in question and not to the assets of the Redeveloper of the other Component or to any trustee of or holder of a beneficial interest in either of the Redevelopers in the event of any breach by such Redeveloper of its obligations, covenants, agreements, warranties, representations or other undertakings of any kind hereunder, it being understood that in no event shall the assets of the other Redeveloper or of any such trustee or holder, other than their interest in the Component in question, be subject to liability for any such breach.

If a mortgagee forecloses in accordance with Section 4.03 or 4.04 of this Agreement, then said mortgagee, if it elects, or, if said mortgagee, upon notice to the Authority at the time of giving a mortgagee's deed or accepting a deed in lieu of foreclosure, elects not to be responsible, the designated Redeveloper immediately prior to foreclosure will be responsible to the Authority under the provisions of Section 3.02(a)(7) and (a)(8) of this Agreement.

It is understood and agreed that notwithstanding anything to the contrary contained in this Agreement, from and after submission of the Building to the provisions of Chapter 183A of the Massachusetts General Laws, any obligations, agreements, covenants, representations or warranties herein contained on the part of the Redeveloper relating to the Commercial Component shall be obligations, agreements, covenants, representations or warranties of the Commercial Redeveloper, its successors and assigns, and not of the Residential Redeveloper, or its successors or assigns, and any obligations, agreements, covenants, representations or warranties herein contained on the part of the Redeveloper relating to the Residential Component shall be obligations, agreements, covenants, representations or warranties of the Residential Redeveloper and its successors and assigns, and

not the Commercial Redeveloper or its successors or assigns, it being the intent of the foregoing to divide the obligations, agreements, covenants, representations and warranties herein contained to the maximum extent possible between the Residential Redeveloper and the Commercial Redeveloper. For the purposes of the foregoing sentence, the Improvements to be constructed on property other than the Property shall be deemed to relate to the Commercial Component and not the Residential Component. No violation of any covenant, agreement, representation, warranty or obligation or other default hereunder applicable solely to one Component shall be deemed a violation of any covenant, agreement, representation, warranty or obligation or other default with respect to the other Component.

Section 9.11: Amendment of Plan

No modification or amendment to any provisions of the Plan shall be effective with respect to the Property, unless such modification or amendment of the Plan has been consented to by the Redeveloper and everyone entitled to be given notice under Section 8.03 prior to becoming effective with respect to the Redeveloper.

Section 9.12: Waivers

Any right or remedy which the Authority or the Redeveloper may have under this Agreement, or any of its provisions, may be waived in writing by the Authority or the Redeveloper, as the case may be, without execution of a new or supplementary Agreement, but any such waiver shall not affect any other rights not specifically waived, and no waiver by the Redeveloper of a right under Section 8.01 or 8.02 shall be effective unless approved in writing by everyone then entitled to be given notice under Section 8.03.

Section 9.13: Establishment of Condominium

The Redeveloper at any time after Condominium Substantial Completion and receipt of a partial Certificate of Completion for the Residential Component, including all common areas and facilities which may be included in said Component, may subject all or any portion of the Building, including all fee interests in any land underlying and expressly included as part of the condominium, to the provisions of Chapter 183A of the Massachusetts General Laws, and, subject to the submission to the

Authority of all documents as shall be necessary in order to duly establish such a condominium in the Building, the Authority hereby consents to and approves the establishment of said condominium in the Building provided that said documents contain no provision which violates or is inconsistent with the Plan or this Agreement, and the Authority hereby agrees that the terms and provisions of this Agreement, and the Authority's interest in this Agreement and the Property, shall be subject and subordinate to said Chapter 183A and the terms and provisions of the master deed, by-laws, and other condominium documents that shall be executed and recorded at the time said condominium is established.

Section 9.14: Certain Matters Regarding the Plan

Pursuant to the authority contained in the Plan in Section F.2.a.(2) to subdivide disposition parcels, and in Section M.1. to adjust the Plan in minor ways, the Authority hereby:

(1) subdivides the Arlington/Hadassah Subparcel of Parcel 1 of the Park Plaza Urban Renewal Project Area (as defined in the Plan) into two disposition parcels, the first of which shall be the parcel known as and numbered 250 Boylston Street and the second of which shall be the remainder of the Arlington/Hadassah Subparcel as defined in the Plan; and

(2) without limitation, adjusts the Plan to remove the following requirements contained in the Plan relating to the Arlington/Hadassah Subparcel of Parcel 1:

- (i) forty-five foot pedestrian, vehicular and utility easement along the Hadassah Way alignment;
- (ii) direct linkage of peripheral arcades to those included within redevelopment of abutting parcel; and
- (iii) provide weather protected or other connection from development to the Arlington Street subway, linking the station to the arcade system required around the grade level periphery of the redeveloped buildings.

The Authority hereby confirms that the Redeveloper's contemplated construction of the Improvements pursuant to the Plans and Specifications and the proposed use thereof as a combination retail, office and residential condominium project is in compliance with and fully satisfies the requirements of the Plan. To the extent the Plans and Specifications conflict with any provisions of the Plan, in accordance with its authority under Section M.1. of the Plan, the Authority is deemed to have adjusted the Plan to eliminate such conflicting provisions of the Plan.

Section 9.15: Status Reports

The Authority shall, within ten (10) days after written request therefor by the Redeveloper or any mortgagee, provide a certificate in writing, as requested or applicable, that the Agreement or any particular section hereof specified by the requesting party is in full force and effect and unmodified, or in what respects the Agreement or section is no longer in force or effect or has been modified; that the Redeveloper is in compliance with this Agreement or any particular section hereof specified by the requesting party, or, in the case of any noncompliance, in what respects there is not compliance; or as to any other matter reasonably related to the Improvements or the Property that the requesting party may reasonably request of the Authority. The Authority hereby authorizes the Director of the Authority to execute and deliver any such certificate on behalf of the Authority.

IN WITNESS WHEREOF, as of the day and year first above written, at Boston, Massachusetts, the parties hereto have caused this Agreement in five counterparts to be signed, sealed and delivered by their duly authorized officers or representatives, respectively.

Approved as to form:

BOSTON REDEVELOPMENT AUTHORITY
(Corporate Seal)

Chief General Counsel

By: _____
Stephen Coyle, Director

(Signatures continued on next page)

THE HERITAGE RESIDENTIAL REALTY
TRUST

By: _____
Ronald M. Druker, as Trustee
and not individually

By: _____
David C. Bell, as Trustee and
not individually

THE HERITAGE COMMERCIAL REALTY TRUST

By: _____
Ronald M. Druker, as Trustee
and not individually

By: _____
David C. Bell, as Trustee and
not individually

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

, 1986

Then personally appeared before me the above-named Stephen Coyle, Director of the Boston Redevelopment Authority, who executed the foregoing Agreement on behalf of the Boston Redevelopment Authority and acknowledged the same to be the free act and deed of said Authority.

Notary Public
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

, 1986

Then personally appeared before me the above-named Ronald M. Druker and David C. Bell, as Trustees of The Heritage Residential Realty Trust and The Heritage Commercial Realty Trust, who acknowledged the foregoing to be their free act and deed as Trustees as aforesaid.

Notary Public
My commission expires:

Exhibit A
Cooperation Agreement

Exhibit B
DIP Agreement

Exhibit C
Letter of Intent

Exhibit D
Plans and Specifications

Exhibit E

Plaza Plan

Exhibit F
Plan of Retained Parcel

Exhibit G
Survey Plan

Exhibit H

Indemnification and Maintenance Agreement